Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
National Exchange Carrier Association, Inc.	)	
	)	RM No. 10603
Petition to Amend Section 69.104 of the Commission's Rules	)	
	)	

JOINT REPLY COMMENTS OF

EASTERN RURAL TELECOM ASSN.

INDEPENDENT TELEPHONE & TELECOMUNICATIONS ALLIANCE

JOHN STAURULAKIS INCORPORATED

MATANUSKA TELEPHONE ASSN.

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

NORTH PITTSBURGH TELEPHONE COMPANY

NORTH STATE COMMUNICATIONS

ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

TDS TELECOM

UNITED STATES TELECOM ASSOCIATION

WESTERN ALLIANCE

The record in this proceeding strongly supports grant of the Associations' *Joint Petition for Expedited Waiver*.[1] Ample evidence has been provided that the costs of

[1] National Exchange Carrier Association, Inc. Petition to Amend Section 69.104 of the Commission's Rules, RM 10603, *Joint Petition for Expedited Waiver* (August 19, 2003) (*Waiver Petition*) filed by Eastern Rural Telecom Association (ERTA), Independent Telephone & Telecommunications Alliance (ITTA), John Staurulakis Incorporated (JSI), Matanuska Telephone Association, Inc., National Exchange Carrier Association, Inc. (NECA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies

providing channelized T-1 services[2] merit assessment of at most 5 End User Common Line (EUCL) charges (also commonly referred to as Subscriber Line Charges or SLCs) and that grant of the requested waiver is in the public interest pending Commission consideration in a rulemaking proceeding of whether further reductions are warranted.

Concerns expressed by AT&T about improper cost shifts to the Universal Service Fund (USF) are unfounded. Additionally, AT&T's suggestion that ILECs should voluntarily reduce the SLC charges on channelized T-1 services are without merit.

I. GOOD CAUSE EXISTS FOR GRANT OF THE REQUESTED WAIVER.

Virtually all commenters recognize that the Commission's existing rules unfairly impose excessive EUCL charges on users of channelized T-1 services. GVNW Consulting, Inc. (GVNW), for example, states that the time is ripe for the Commission to correct the anomalous application of SLCs to T-1 and primary rate interface (PRI) Integrated Services Digital Network (ISDN) services and level the playing field for T-1 services.[3] Matanuska Telephone Association, Inc. (MTA), TDS Telecommunications Corporation (TDS), and Great Plains Communications, Inc. (Great Plains) all agree that channelized T-1 services are provisioned in the same manner as PRI ISDN services and should be accorded the same treatment as PRI ISDN for purposes of assessing end user common line (EUCL) charges.[4] TDS provides further evidence that assessment of no

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(OPASTCO), TDS Telecom (TDS), the United States Telecom Association (USTA), and the Western Alliance (collectively, "the Associations").

[2] "Channelized T-1 services" are exchange access services using digital, high capacity T-1 interfaces for which the customer supplies the channelization equipment. These exchange services are often sold under the name Digital Transport Service (DTS).

[3] GVNW at 3 (Sept. 25, 2003).

[4] MTA at 5 (Sept. 25, 2003); TDS at 2 (Sept. 25, 2003); Great Plains at 3 (Sept. 25, 2003).

more than 5 SLC charges on channelized T-1 services is reasonable, noting its cost analysis of 300 sample loops which showed that the ratio of non-traffic-sensitive (NTS) loop costs for channelized T-1 services to the NTS costs of single channel analog service is "closer to 4 to 1 than 24 to 1."[5]

TDS echoes the Associations' concern that unequal treatment of functionally similar services creates an artificial incentive for customers to subscribe to certain services and may cause subscribers to choose a less efficient technology.[6] TDS reports that some customers specifically request deployment of ISDN services where available solely to realize the cost savings of reduced EUCL charges.[7] However, Rural Companies note that PRI ISDN services are not available in many rural areas, leaving many rural business subscribers with no option other than to be disadvantaged by the excessive SLC rates applied to the more commonly available option, channelized T-1 services.[8]

These comments make clear that there is a need for the Commission to grant a waiver quickly. As the Associations pointed out, the Commission has yet to act on the

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[5] *Id.* Similarly, Great Plains notes that its ratio of T-1 loop costs to POTS loop costs is about 5 to 1 or less. Great Plains at 4 (Sept. 25, 2003).

[6] TDS at 3 (Sept. 25, 2003). TDS observes that money spent on deployment of PRI ISDN solely to enable customers to take advantage of reduced EUCL charges is money that is not available to deploy advanced telecommunications services more widely to all the ILEC's subscribers. *Id*. at 7.

[7] *Id*. at 3.

[8] Arlington Telephone Company, The Blair Telephone Company, Eastern Nebraska Telephone Company, Rock County Telephone Company, Hershey Cooperative Telephone Company, City of Faith Municipal Telephone Company, Kennebec Telephone Company, Roberts County Telephone Cooperative Association, RC Communications and Northwest Telephone Cooperative Association (collectively, "Rural Companies") at 2 (Sept. 25, 2003); Great Plains at 4 (Sept. 25, 2003).

September 2002 *Petition for Rulemaking*,[9] despite strong industry support.[10] Nor has the Commission taken action on the Wireline Competition Bureau (WCB) staff recommendation, released in connection with the Commission's 2002 biennial regulatory review, suggesting that the Commission initiate a rulemaking proceeding because "the rules regarding limits on the EUCL charges applicable to T-1 exchange access services in their current form may not be necessary in the public interest as a result of meaningful economic competition."[11] Instead, more than a year after the *Petition for Rulemaking* was submitted, customers of T-1 channelized services are still saddled with SLC burdens that far exceed the NTS loop costs of the service provided. Further delay is unwarranted.

Good cause exists for grant of the requested waiver. The Commission has an ample record and should act expeditiously rather than risk additional harm to rural LECs and their customers. Great Plains notes that grant of the requested waiver would better serve the public interest than "strict adherence to the current rule" and would be responsive to the needs of small companies.[12] TDS observes that the "inequities and economic distortions created by the current pricing system for channelized T-1 services warrant the grant of immediate, extraordinary relief pursuant to the Commission's waiver authority."[13] The Commission should grant the requested interim waiver to accord

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[9] National Exchange Carrier Association, Inc. Petition to Amend Section 69.104 of the Commission's Rules, *Petition for Rulemaking* (Sept. 26, 2002) (*Petition for Rulemaking*).

[10] The Commission sought and received comment on the *Petition for Rulemaking* in December 2002. ALLTEL Communications, Inc. (ALLTEL), GVNW, NTCA, OPASTCO, TDS, and USTA supported the *Petition for Rulemaking*.

[11] Wireline Competition Bureau, Biennial Regulatory Review 2002, Staff Report, WC Docket No. 02-3131, GC Docket No. 02-390, 18 FCC Rcd 4622 (2003) (rel. Mar. 14, 2003) (*WCB Staff Report*) at 102.

[12] Great Plains at 6-7 (Sept. 25, 2003)

[13] TDS at 2 (Sept. 25, 2003).

channelized T-1 services SLC treatment that is consistent with the treatment of functionally similar PRI ISDN.

II. REDUCING THE NUMBER OF SLCs ASSESSED ON CHANNELIZED T-1 SERVICES WILL NOT SHIFT UNDUE COSTS TO THE UNIVERSAL SERVICE FUND.

Although AT&T does not dispute the Associations' claim that current access charge rules overcharge customers of channelized T-1 services, AT&T instead claims that the requested waiver is not in the public interest because it would shift recovery of common line costs to the universal service fund.[14]

AT&T ignores the fact that the Commission established the Interstate Common Line Support (ICLS) universal service fund in conjunction with access reforms intended to "align the interstate access rate structure more closely with the manner in which costs are incurred . . . ."[15] ICLS was specifically designed to provide each rate-of-return ILEC with support necessary to meet its common line revenue requirement after recovery of common line revenue from tariffed end-user charges (SLCs and port charges) and Long Term Support (LTS).[16]

AT&T also ignores that the Commission has *already determined* that costs of providing high capacity digital transmission facilities configured as PRI ISDN are

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[14] AT&T at 2-3 (Sept. 25, 2003).

[15] Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket no. 00-256, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation, CC Docket No. 98-77, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket no. 98-166, *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd 19613 at ¶ 3 (2001) (*MAG Order*).

[16] *MAG Order* at ¶ 142.

reasonably recovered, on average, by no more than five SLCs. NECA's *Petition for Rulemaking* showed, and comments submitted by other parties confirm, that channelized digital T-1 services are provided in the same manner as PRI ISDN. In the *Waiver Petition*, the Associations also discussed a cost analysis using Common Line pool cost data from NECA's annual access filing, indicating that the actual ratio of T-1 loop costs to POTS loop costs, based on common line cost data from NECA's annual access filing, is actually less than 5:1.[17] Other parties have confirmed this finding.[18]

As the rules now stand, rates for channelized T-1 services are *not* aligned with costs, and customers of these services are required to pay charges far in excess of the costs they impose on the network. Thus, reducing the number of SLCs imposed on channelized T-1 will correct this imbalance, not improperly shift costs to USF.

As described in the *Waiver Petition*, the Associations anticipate that the impact of this change on ICLS will be minimal, because current demand for channelized T-1 services among rate-of-return carriers is small. The Associations estimate that $11.5 million (annually) would be recovered via the ICLS mechanism instead of from end-user SLC charges.[19] This increase, which is extremely small in comparison to the overall size of the universal service fund, is clearly preferable to requiring customers of channelized T-1 services to continue to pay an implicit subsidy. Contrary to AT&T's assertion, the purpose of this waiver is to make high-capacity channelized services more affordable for

[17] The cost analysis, provided in a February 2003 *ex parte,* indicated a T-1:POTS loop cost ratio of 3.76:1 using data from NECA's 2002 annual access filing. *See* Letter from Colin Sandy, NECA to Marlene H. Dortch, FCC, RM No. 10603 (Feb. 27, 2003).

[18] *See supra* pp. 2-3.

[19] *Waiver Petition* at 8-9.

existing rural customers that do not have the same choices as their urban counterparts. Grant of this waiver will not significantly impact demand.

III. AT&T's SUGGESTION THAT CARRIERS SHOULD VOLUNTARILY REDUCE THE SLCs ASSESSED FOR CHANNELIZED T-1 SERVICES AND FUND THE SHORTFALL THROUGH PURPORTED OVEREARNINGS IS WITHOUT MERIT.

AT&T provides no reasonable explanation for its suggestion that carriers should "voluntarily" reduce the number of SLCs on channelized T-1 services without a rule change or waiver. AT&T over-generalizes that any increase in universal service funding as "not in the public interest" and misrepresents the objectives of the ongoing Commission proceeding to consider reform of the USF contribution mechanism as "a proceeding to reform the entire system."[20] Although fund increases remain a factor in every decision, the Commission's overriding objective is to further the goals of universal service, not foreclose all growth in the fund.[21] The Associations have demonstrated that the increase to ICLS would be relatively small in comparison to the total size of the fund and clearly preferable to requiring customers of channelized T-1 services to continue to overpay.

[20] AT&T at 6 (Sept. 25, 2003).

[21] For example, the Commission implemented the new ICLS mechanism in 2002 to "replace implicit support for universal service [formerly] recovered by rate-of-return carriers through the CCL charge." *MAG Order* at ¶ 128. The Commission is also considering changes to its Lifeline and Link-up programs to enhance participation. *See* Lifeline and Link-Up, WC Docket No. 03-109, *Notice of Proposed Rulemaking*, 18 FCC Rcd 11628 (2003) and Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, *Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10958 (2003).

AT&T's claim that voluntary SLC reductions would "ameliorate common line overearnings" is incorrect.[22] AT&T ignores the fact that the ICLS mechanism is designed to provide each rate-of-return LEC with the support necessary to meet, not exceed, its common line revenue requirement. ICLS is calculated by subtracting the sum of the maximum common line revenue from SLCs, other common line end user charges, and LTS from the carrier's common line revenue requirement for that study area, as calculated at the prescribed 11.25 percent rate of return. This ensures that there will be no common line overearnings. In contrast, AT&T's "voluntary" SLC reductions would cause participating rate-of-return carriers to under-earn.

IV. CONCLUSION

There is ample evidence in the record showing that section 69.104 of the Commission's rules unfairly overcharges users of channelized T-1 services compared to users who obtain similarly provisioned PRI ISDN services. To the extent that availability of PRI ISDN service is confined to areas served by non-rural carriers, the current rule harms rural customers and is contrary to the Commission's universal service goals. The Commission should accordingly grant the requested waiver to permit the application of no more than five SLCs to T-1 interfaces for which the customer supplies the terminating channelization equipment, pending initiation of a rulemaking proceeding to amend

[22] AT&T at 6 (Sept. 25, 2003).

section 69.104 of its rules to specify imposition of no more than five EUCLs on channelized T-1 services.

Respectfully submitted,

October 10, 2003

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Joint Reply Comments was served on this 10th day of October 2003 by electronic delivery or by first-class mail to the persons listed below.

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